

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

OFELIA RODRIGUEZ, et al.,) Case No. 06-CV-2753-W (JMA)
Plaintiffs,)
v.) **ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR RELIEF FROM
RESPONSES AUTOMATICALLY DEEMED
ADMITTED**
UNITED STATES OF AMERICA, et)
al.,) [Docs. 41, 42]
Defendants.)

)

Plaintiffs Ofelia Rodriguez, Myra Ponce, Ismael Martinez and Kimberline Martinez (hereinafter collectively "Plaintiffs") have timely filed a Motion for Relief from Responses Automatically Deemed Admitted. Defendant United States of America (hereinafter "the Government") opposes. For the reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiffs' motion.

I. BACKGROUND

On or about July 15, 2008, the Government served Requests for Admissions upon Plaintiffs. Def.'s Ex. 1. As of September 15, 2008, Plaintiffs had not responded, and the Government served a Notice of Deemed Admissions in which it indicated that the

1 requests for admissions were deemed admitted by virtue of
2 Plaintiffs' failure to respond thereto. Def.'s Ex. 2.
3 Plaintiffs state that they "inadvertently neglected to send out
4 their responses and denials" to the requests, and that they did
5 not realize this until the Government's counsel advised their
6 counsel of this fact. Pls.' Mem. at 3; Barraza Decl., ¶ 7.
7 Plaintiffs state that they immediately thereafter served
8 responses to the requests. Pls.' Mem. at 3; Barraza Decl., ¶ 8;
9 Pls.' Lodgment of Exhibits, Ex. B. Plaintiffs now seek relief
10 from the deemed admissions.

11 **II. LEGAL STANDARDS**

12 Rule 36 of the Federal Rules of Civil Procedure, applicable
13 to requests for admission, states that "[a] matter is admitted
14 unless, within 30 days after being served, the party to whom the
15 request is directed serves on the requesting party a written
16 answer or objection addressed to the matter and signed by the
17 party or its attorney." Fed. R. Civ. P. 36(a)(3). Any matter
18 admitted under Rule 36 is "conclusively established unless the
19 court, on motion, permits the admission to be withdrawn or
20 amended." Fed. R. Civ. P. 36(b). "[T]he court may permit
21 withdrawal or amendment if it would promote the presentation of
22 the merits of the action and if the court is not persuaded that
23 it would prejudice the requesting party in maintaining or
24 defending the action on the merits." Id.

25 "The first prong of this test . . . essentially asks if
26 allowing the withdrawal will aid in the resolution of the case. .
27 . ." Gallegos v. City of Los Angeles, 308 F.3d 987, 993 (9th
28 Cir. 2002). This prong is satisfied when "upholding the

1 admissions would practically eliminate any presentation of the
 2 merits of the case." Conlon v. United States, 474 F.3d 616, 622
 3 (9th Cir. 2007), citing Hadley v. United States, 45 F.3d 1345,
 4 1348 (9th Cir. 1995). This prong is also satisfied when
 5 amendment or withdrawal of the admissions would "facilitate a
 6 presentation of the merits" of the case. Hadley, 45 F.3d at
 7 1348.¹

8 The second half of the test, the prejudice component,
 9 requires "not simply that the party who obtained the admission
 10 will now have to convince the factfinder of its truth. Rather,
 11 it relates to the difficulty a party may face in proving its
 12 case, e.g., caused by the unavailability of key witnesses,
 13 because of the sudden need to obtain evidence with respect to the
 14 questions previously deemed admitted." Id. (citation and
 15 quotations omitted). The party relying on the deemed admission
 16 has the burden of establishing that withdrawal or amendment of
 17 the admission would prejudice the party's case. Id.

18 //

19 //

20
 21 ¹Since the issuance of its ruling in Omni Home Financing, Inc. v. Hartford Life and Annuity Ins. Co., 2007 WL 4570772 (S.D. Cal., Dec. 27, 2007), and in consideration of the issues raised in the instant motion, the Court has conducted further research and analysis into the standard to be used when evaluating a motion to withdraw or amend admissions. Although the first half of the test in Rule 36(b) is clearly satisfied when upholding the admissions would practically eliminate any presentation of the merits of the case, that is not the sole criterion for withdrawal or amendment of deemed admissions. See, e.g., Januszewski v. Village of Oak Lawn, 2008 WL 4898959, at *2 (N.D. Ill., Nov. 12, 2008); see also Bretana v. International Collection Corp., 2008 WL 4948446, at *2 (N.D. Cal. Nov. 12, 2008) (finding first prong satisfied when deemed admissions would "preclude defendants from refuting aspects of plaintiff's claims"). The Court finds the recent application of Rule 36(b) by the district courts in Januszewski and Bretana to be not only consistent with Ninth Circuit law, but also consistent with the plain language of the Rule.

1 **III. DISCUSSION**

2 In their September 16, 2008 responses to the Government's
 3 requests for admissions (hereinafter "Plaintiffs' September 16,
 4 2008 responses"), Plaintiffs expressly admitted the matters set
 5 forth in Request Nos. 1, 3, 5, 14 and 15. Pls.' Lodgment of
 6 Exhibits, Ex. B. Although the responses were untimely, the
 7 resultant effect is that Plaintiffs presently challenge only
 8 those requests not already expressly admitted by them, i.e.,
 9 Request Nos. 2, 4, 6-7, 8-13 and 16.

10 **A. Presentation of the Merits**

11 **1. Request Nos. 2 and 4**

12 Request Nos. 2 and 4 concern the nature of the relationship
 13 between Plaintiff Myra Ponce and the decedent, Guillermo Martinez
 14 Rodriguez. Request No. 2 seeks the following admission:

15 Guillermo Martinez Rodriguez and Myra Ponce were not
 16 formally married in accordance with the law of the
 State of Baja California, Mexico.

17 Although the Government acknowledges that even a deemed
 18 admission of this matter will still require an analysis of, *inter*
 19 *alia*, whether Ms. Ponce qualifies as a "concubine" under Baja
 20 California law, the Court is concerned about the vagueness and
 21 potential overbreadth of the term "formally married" as used in
 22 Request No. 2. While it does not appear that the Government
 23 would use the deemed admission to foreclose Ms. Ponce from
 24 attempting to establish a concubinage relationship with the
 25 decedent (see Def.'s Opp'n at 7-8), allowing the admission to be
 26 withdrawn will undoubtedly "facilitate a presentation of the
 27 merits" of this aspect of the case. Hadley, 45 F.3d at 1348.
 28 The deemed admission of Request No. 2 could potentially affect

1 Ms. Ponce's standing to sue, and thus could potentially be
 2 dispositive of her claims. Accordingly, the Court finds that the
 3 first prong under Rule 36(b) is satisfied as to this request.

4 Request No. 4 seeks the following admission:

5 California does not recognize "concubinage" under the
 6 law of the State of Baja California, Mexico as the
 equivalent of common law marriage.

7 Requests for admission are permitted in order to establish the
 8 truth of specified facts, as well as an "application of law to
 9 fact," but are not permitted on a disputed contention of pure
 10 law. See Fed. R. Civ. P. 36(a); Playboy Enterprises, Inc. v.
Welles, 60 F. Supp. 2d 1050, 1057 (S.D. Cal. 1999) (stating that
 12 "[r]equests for admissions cannot be used to compel an admission
 13 of a conclusion of law). Request No. 4 improperly requires
 14 Plaintiffs to make a conclusion of law. The Court accordingly
 15 sua sponte **STRIKES** Request No. 4 and the deemed admission
 thereto.

17 **2. Request Nos. 6-7**

18 Request Nos. 6 and 7 seek the following admissions:

19 Request No. 6: Guillermo Martinez Rodriguez' primary
 20 source of income in 2005 was smuggling aliens across
 the international border between the United States and
 Mexico.

21 Request No. 7: In 2005, Luis Martinez Rodriguez paid,
 22 or arranged for Guillermo Rodriguez Martinez to be
 paid, for alien smuggling activities.

24 These requests concern the source of the decedent's income
 25 in 2005. Plaintiffs argue that the deemed admissions to these
 26 requests would prevent them from receiving compensation for the
 27 loss of economic support by the decedent. The deemed admissions,
 28 however, would not preclude Plaintiffs from presenting evidence

1 of any legally derived income earned by the decedent. Moreover,
 2 should Plaintiffs wish to contend that income derived from alien
 3 smuggling activities is a proper element of damages, the
 4 admissions will not prevent them from doing so. The Court thus
 5 finds that the first prong of the test set forth in Rule 36(b)
 6 has not been satisfied.

7 **3. Request Nos. 8-13**

8 Request Nos. 8 through 13 concern a prior incident at the
 9 border which occurred on June 4, 2005 and which allegedly
 10 involved the decedent:

11 Request No. 8: On June 4, 2005, Guillermo Martinez
 12 Rodriguez crossed the primary fence between Mexico and
 13 the United States while engaged in alien smuggling
 14 activities.

15 Request No. 9: On June 4, 2005, Guillermo Martinez
 16 Rodriguez used a rebar ladder to assist aliens over the
 17 secondary fence into the United States.

18 Request No. 10: On June 4, 2005, Guillermo Martinez
 19 Rodriguez threw one or more rocks at a Border Patrol
 20 agent or agents.

21 Request No. 11: On June 4, 2005, Martin Delgado
 22 Martinez witnessed Guillermo Martinez Rodriguez throw
 23 rocks at a Border Patrol agent or agents.

24 Request No. 12: On June 4, 2005, Border Patrol Agent
 25 Jose Contreras fired his service weapon in Guillermo
 26 Martinez Rodriguez' direction after Border Patrol Agent
 27 Miguel Ponce was struck by a rock.

28 Request No. 13: [Duplicate of Request No. 11]

29 Although the deemed admissions are not case-dispositive,
 30 they may certainly have an effect on the merits of the action.
 31 Requiring the deemed admissions to stand would take away
 32 Plaintiffs' ability to rebut the Government's asserted intent to
 33 use the admissions "to help prove Decedent's identity as the
 34 source of the rock thrown at Agent Campos and to prove Decedent's

1 recklessness in 'rocking' Agent Campos despite personal knowledge
2 that an Agent may respond to being 'rocked' with deadly force."
3 Def.'s Opp'n at 10. If the deemed admissions are used to this
4 effect, they may very well convince the trier of fact that the
5 decedent did throw a rock at Agent Campos during the subject
6 incident, an assertion which Plaintiffs hotly contest. See Pls.'
7 Resps. to Req. for Admissions, Nos. 8-13. Given the unqualified
8 denials of the requests set forth in the Plaintiffs' September
9 16, 2008 responses, in which Plaintiffs assert that the decedent
10 was not even present at the location of the prior incident, the
11 deemed admissions would significantly impair Plaintiffs' ability
12 to refute the Government's assertion about the decedent's alleged
13 prior rock-throwing incident. The Court is thus satisfied the
14 first prong of the test in Rule 36(b) has been met as to these
15 requests.

16 **4. Request No. 16**

17 Request No. 16 seeks the following admission:

18 On December 30, 2005, Guillermo Martinez Rodriguez
19 threw one or more rocks at Border Patrol Agent Faustino
Campos.

20 A trier of fact, on the basis of this admission alone, could
21 potentially be convinced that Agent Campos was justified in
22 shooting the decedent. This could absolutely "take the wind out
23 of [Plaintiffs'] sails" (see Perez v. Miami-Dade County, 297 F.3d
24 1255, 1266 (11th Cir. 2002)), as Plaintiffs would be precluded
25 from presenting their version of the events that took place
26 during the incident in question. It is thus clear that this
27 admission, when compared to the response contained in Plaintiffs'
28 September 16, 2008 responses, in which Plaintiffs deny the

1 request without qualification, would significantly impair
2 Plaintiffs' ability to present the merits of their case and/or
3 would impair their ability to rebut the Government's and/or Agent
4 Campos' defense. The Court finds that the first prong under Rule
5 36(b) is satisfied.

6 **B. Prejudice to Defendants**

7 The Government has made no argument that it would be
8 prejudiced by a withdrawal or amendment of Plaintiffs' deemed
9 admissions. It carries the burden of establishing such
10 prejudice. Hadley, 45 F.3d at 1348. Therefore, the second prong
11 of Rule 36(b) is satisfied as to all requests at issue in
12 Plaintiffs' motion.

13 Plaintiffs have accordingly satisfied the two-pronged test
14 as to Request Nos. 2, 8-13 and 16.

15 **IV. CONCLUSION**

16 For the reasons set forth above, the Court hereby **GRANTS IN**
17 **PART** and **DENIES IN PART** Plaintiffs' Motion for Relief from
18 Responses Automatically Deemed Admitted, as follows:

19 1. Plaintiffs' motion as to Request Nos. 2, 8-13 and 16 is
20 **GRANTED**. The Court accordingly shall allow amendment of the
21 deemed admissions to these requests, and permits the answers set
22 forth in Plaintiffs' September 16, 2008 responses to stand; and

23 2. Plaintiffs' motion as to Request Nos. 6 and 7 is **DENIED**.
24 Plaintiffs' September 16, 2008 responses to these requests for
25 admissions are stricken and the matters therein are deemed
26 admitted.

27 //

28 //

Additionally, the Court sua sponte **STRIKES** Request No. 4, and the deemed admission thereto, on the basis that the request constitutes an impermissible request for admission.

IT IS SO ORDERED.

DATED: December 22, 2008

Jen M. Adler
Jen M. Adler
U.S. Magistrate Judge